

EXHIBIT 40

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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4
5
6 IN RE: NATIONAL PRESCRIPTION MDL No. 2804
7 OPIATE LITIGATION

8 Case No. 17-md-2804
9 Judge Dan Aaron
10 Polster

This document relates to:

County of Cuyahoga v. Purdue
Pharma L.P., et al.

City of Cleveland, Ohio v. Purdue
Pharma L.P., et al.
The County of Summit, Ohio, et al.
v. Purdue Pharma L.P., et al.

Case No. 1:18-OP-45132

17
18 Videotaped deposition of
19 BRAD GESSNER

20 December 3, 2018
21 9:12 a.m.

22 Taken at:

23 Brennan, Manna & Diamond
24 75 East Market Street
25 Akron, Ohio

Renee L. Pellegrino, RPR, CLR

1 we look at, but the law says to us as
2 prosecutors, here are the charges you can charge
3 with; so if we can meet those elements, we're
4 going to charge them.

5 Q. To answer my question, do you
6 believe that the supplier of the heroin in an
7 overdose case is the proximate cause of that
8 person's death?

9 MS. HERMIZ: Objection to form.

10 A. They're a cause.

11 Q. Okay. What percentage of the
12 responsibility for that death would you
13 attribute to the person who supplied the
14 individual with heroin?

15 MS. HERMIZ: Objection to form.

16 A. As a prosecutor, if I can file a
17 charge on someone, I guess I can charge multiple
18 people with one hundred percent, so I don't look
19 at those things and that's not something where
20 we've looked at to -- we, again, look at the law
21 and can we prove that law was violated, not what
22 percentage of the law did they break.

23 Q. Okay. Would you also consider the
24 individual who used or ingested the drug that
25 ultimately led to the overdose death to have

1 committed a crime?

2 A. Had they lived, yes.

3 Q. Then do they also in some sense play
4 a role or are they also a factor in causing
5 death?

6 A. Factor, yes.

7 Q. Is it difficult in these types of
8 cases to prove causal connection?

9 MS. HERMIZ: Objection to form.

10 A. In what manner, causal connection of
11 death?

12 Q. Is it difficult in these cases to
13 prove that the supplier of the drugs should be
14 held responsible for causing the overdose death?

15 MS. HERMIZ: Objection to form.

16 A. If we have charged a supplier, we
17 have an obligation to show the link between
18 their drug they did and the death. That's why
19 we have the medical examiner that comes in with
20 that toxicology report to say these drugs. We
21 then -- then look and see -- law enforcement
22 investigates to say those specific drugs came
23 from this person.

24 Q. Okay. Would you agree with me that
25 prosecuting individuals for involuntary